

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION

*NORMAN MILLINER,*

Plaintiff,

v.

*NORTHPORT HEALTH SERVICES OF  
MISSOURI, L.L.C., d/b/a WARSAW  
HEALTH AND REHABILITATION  
CENTER*

Defendant.

Cause No. 07-4174-CV-C-WAK

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**NOTICE OF REMOVAL**

COMES NOW defendant, Northport Health Services of Missouri, L.L.C., d/b/a Warsaw Health and Rehabilitation Center, by and through its attorneys, Sandberg, Phoenix & von Gontard, P.C., pursuant to 28 U.S.C. §1332 and § 1441 and Rule 81(c) of the Federal Rules of Civil Procedure, and for its Notice of Removal, states as follows:

1. This civil action was commenced on or about July 20, 2007, in the Circuit Court for Benton County, State of Missouri, by plaintiff Norman Milliner, against defendant Northport Health Services of Missouri, L.L.C., d/b/a Warsaw Health and Rehabilitation Center. Said action was assigned Cause No. 07BE-CC00040.

2. Plaintiff's Petition for Damages is pleaded in two counts. Count I is brought by plaintiff for wrongful death pursuant to RSMo §537.080 *et seq.* Count II purports to set forth a cause of action for "Lost Chance of Survival" pursuant to RSMo §537.021. Generally, plaintiff's Petition for Damages alleges that defendant's failure to identify symptoms of infection, monitor fluid levels, properly position the decedent, monitor medications, and monitor the decedent to prevent falls, resulted in the lost chance of survival and/or death of plaintiff's decedent, Virginia Milliner. Attached hereto as Exhibit A to this Notice of Removal is a full and complete copy of the entire State Court file connected with this suit.

3. Pursuant to 28 U.S.C. 1332, "district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between: (1) citizens of different states..."

4. Plaintiff Norman Milliner is a citizen and resident of the State of Kansas. *See* plaintiffs' Petition for Damages at Paragraph 1, contained in Exhibit A.

5. Defendant Northport Health Services of Missouri, L.L.C., d/b/a Warsaw Health and Rehabilitation Center is not and was not at the time of the commencement of this action a corporate citizen of the State of Missouri.

6. For purposes of diversity jurisdiction, a limited liability corporation (LLC) has the citizenship of its members. GMAC Commercial Credit, LLC v. Dillard Dep't Stores, Inc., 357 F.3d 827, 829 (8<sup>th</sup> Cir. 2004).

7. Defendant Northport Health Services of Missouri, L.L.C.'s members, J. Norman Estes and Northport Health Services, Inc., are citizens of the State of Alabama. *See* Affidavit of J. Norman Estes, attached hereto as Exhibit B.

8. At the conclusion of each of the two counts, plaintiff seeks damages in a sum that is "fair and reasonable" for the injuries and/or death of Virginia Milliner. This lawsuit alleges medical malpractice/nursing home negligence resulting in the lost chance of survival and death of Virginia Milliner. As a result, the amount in controversy, exclusive of costs and interest, is in excess of seventy-five thousand dollars (\$75,000), the jurisdictional minimum for this Court. Therefore, this Court has jurisdiction over this case pursuant to 28 U.S.C. § 1332.

9. Removal of this cause of action to this Court is sought pursuant to the provisions of 28 U.S.C. § 1441, and the time for filing this Notice of Removal as set forth in 28 U.S.C. § 1446 has not expired. This case is being removed within thirty (30) days of notice and service upon this defendant, which occurred on August 3, 2007.

10. Contemporaneous with the filing of this Notice of Removal, defendant will give written notice thereof to plaintiff, and file a copy of the Notice of Removal with the Clerk of the Benton County Circuit Court, State of Missouri, and provide this Court with Proof of Filing in state court.

WHEREFORE, defendant Northport Health Services of Missouri, L.L.C., d/b/a Warsaw Health and Rehabilitation Center prays that the above-captioned action now pending against it in the Circuit Court of Benton County, State of Missouri, be removed to the United States District Court for the Western District of Missouri, Central Division and for such other and further relief as the Court deems just and proper.

SANDBERG, PHOENIX & von GONTARD, P.C.

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Northport Health Services of Missouri, L.L.C.,  
d/b/a Warsaw Health and Rehabilitation Center

**CERTIFICATE OF SERVICE**

I hereby certify that on the 4th day of September, 2007, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

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